



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-3257

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120802.

The Texas Department of Health (the "department") received three open records requests from the same individual for all records pertaining to three particular department investigations of Charter Behavioral Health Systems of Corpus Christi, Inc. You contend that the requested records are made confidential by various state laws and therefore must be withheld pursuant to section 552.101 of the Government Code.¹

You contend that records of two of the investigations are made confidential under section 261.201 of the Family Code, which provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note that although the department did not request an open records decision from this office within the ten business days following the department's receipt of the open records request, the fact that information is made confidential by statutory law constitutes a "compelling" reason for non-disclosure that overcomes the legal presumption that the records are public information. See Gov't Code § 552.302; Open Records Decision No. 150 (1977). Consequently, we will consider your section 552.101 claims.

only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the department has adopted that would permit access to the requested records. Because the records of the two investigations pertain to investigations of the abuse or neglect of a child, this office concludes that the department must withhold the records of these investigations in their entirety pursuant to section 261.201 of the Family Code.

Two of the documents connected with one of these investigations, however, were not created for purposes of the investigation and therefore are not made confidential by section 261.201. One of these documents is entitled "Statement of Deficiencies and Plan of Correction." This document must be released in its entirety.

You inform us that the other document, entitled "Report of Contact," was created "solely for the purpose of documenting the Medicare investigation performed by [the department], pursuant to federal law." Because this record was not created for purposes of chapter 261 of the Family Code, we must consider the extent to which this record is made confidential by other law. Section 552.101 of the Government Code also excepts from required public disclosure information protected by the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public pursuant to common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Some of the information at issue reveals the identity of patients with emotional disorders and as such must be withheld from the public to protect those individuals' privacy interests. See Open Records Decision Nos. 343 (1982), 262 (1980). We have marked in brackets information that reveals the identity of mental health patients that must be withheld on privacy grounds.

This same document also contains information made confidential by section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients and makes confidential “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” *See also* Health & Safety Code § 611.001 (defining “patient” and “professional”). Portions of this documents either consist of patients’ mental health records or contain information that appears to have been obtained from mental health records and patient-professional communications. Neither may be released except in accordance with sections 611.004 and 611.0045. Health and Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045. We have marked in brackets the information that must be withheld pursuant to section 611.002 of the Health and Safety Code.

You contend that the records pertaining to the third department investigation are made confidential by section 48.101 of the Human Resource Code. Section 48.101 of the Human Resources Code pertains to disclosure of information about reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.

We generally agree that most of the records connected with this investigation are confidential under section 48.101(a) of the Human Resources Code. *See* Hum. Res. Code § 48.082(a); *see also id.* § 48.002 (definitions). The department must not release these records to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances). However, as discussed above,

the department must release the "Statement of Deficiencies and Plan of Correction" in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William M. Walker
Assistant Attorney General
Open Records Division

WMW/RWP/nc

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